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December 13, 1995

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DEC 13 1995

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: EX PARTE NOTICE  
Revision of Rules and Policies for the Direct Broadcast Satellite  
Service (the "DBS Rulemaking")  
IB Docket No. 95-168  
PP Docket No. 93-253 ✓

Dear Mr. Caton:

This letter is written on behalf of DIRECTV, Inc. and concerns the relationship between the above-captioned proceeding and the Commission's Second Annual Report in CS Docket No. 95-61, FCC 95-491, released December 11, 1995 (the "Second Report").

In the Second Report, the Commission reported to Congress on the status of competition in the market for the delivery of video programming. The Commission's conclusions are extremely relevant to its deliberations in the above-captioned DBS Rulemaking proceeding. DIRECTV hereby requests that the Second Report be formally included in and made a part of the record in the DBS Rulemaking.

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In its comments in the DBS Rulemaking, DIRECTV has shown that the imposition of a spectrum aggregation rule which would not allow it, as an independent DBS operator, to bid for the full-CONUS DBS spectrum at 110° would not be in the public interest. DIRECTV showed that the proposed spectrum aggregation rule would have the anticompetitive effect of treating cable television-affiliated companies, who exercise market power in the MVPD market, more favorably than independent MVPDs such as DIRECTV, which do not exercise market power.

In response, the cable-affiliated interests attempted to paint a picture of a fully competitive MVPD marketplace. The Second Report, however, clearly and convincingly rebuts that argument.

First, in massively understated terms, the Second Report notes that: "[W]e cannot conclude that a competitive market currently exists for the delivery of video programming." Second Report at ¶ 9.

More analytically, the Commission concludes:

"Last year, we found that local markets for providing multichannel video programming were highly concentrated, and that most consumers could not choose the services of an MVPD other than the local cable operator. Although providers of DBS and MMDS services have increased their subscribership since last year . . . the combined national market share of non-cable MVPDs at the end of September 1995 was slightly less than nine percent. Thus, on average, we expect that most local markets as measured by current subscribership continue to remain highly concentrated . . . . Using total numbers of subscribers as a measure of market share, the average HHI in local markets for video programming would be over 8650, or more than four times as high as the threshold at which a market may be considered 'highly concentrated.'" [footnotes omitted]

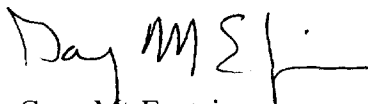
Second Report at ¶ 132.

If competition in the MVPD marketplace and bringing the benefits of competition to consumers is truly the Commission's goal in the DBS Rulemaking, to bar an

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independent DBS provider from bidding for the 110° spectrum, while at the same time allowing members of the cable industry to bid, makes no legal or policy sense. DIRECTV urges the Commission to revise its proposed structural rule so as not to exclude DIRECTV or any other entity without market power from applying for DBS spectrum at 110°.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Gary M. Epstein", with a stylized flourish at the end.

Gary M. Epstein  
Counsel for DIRECTV, INC.

cc: Chairman Reed E. Hundt  
Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Susan Ness  
Commissioner Rachelle B. Chong  
Scott Blake Harris  
William Wiltshire  
Jim Olson  
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